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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
THE KROGER CO.,

Plaintiff,

vs.

MALEASE FOODS CORP., formerly
known as MALEASE FOODS CORP.,

Defendants.

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Case No. 0-1-02-439

DEPOSITION OF JAMES D. PRICE

New York, New York

Thursday, January 22, 2004

Reported by:
Kathy S. Klepfer, RMR
Job No. 732

Page 186

1 J. Price 1/21/04
 2 LK2 is a letter dated September 17,
 3 2001, marked yesterday at the Kadish deposition.
 4 It consists of two pages. It's a letter of
 5 yours September 17 to Kadish, and then attached
 6 is a September 13, 2001 letter.
 7 (Defendant's Exhibit P, a letter dated
 8 9/17/01 to L. Kadish from J. Price, marked
 9 for identification, as of this date.)
 10 Q. The first page, the September 17, 2001
 11 letter to Kadish, simply says in one sentence:
 12 "Dear Larry: I received the attached letter
 13 this morning from my friend Jim Hodge at Kroger.
 14 Please read it and advise." You wrote that,
 15 right?
 16 A. I did.
 17 Q. You don't say anything in there about
 18 your role in the transaction that has just
 19 closed, right?
 20 A. I don't.
 21 Q. You don't tell him that you were an
 22 advisor who received a hundred thousand dollars,
 23 right?
 24 A. I didn't, no.
 25 Q. Now, when you wrote this letter, were

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1 J. Price 1/21/04
 2 you attempting to lead Kadish to believe that
 3 you had just that day, that morning, found out
 4 from your friend Jim Hodge that Kroger had made
 5 the purchase?
 6 A. No.
 7 Q. No. Let's look at the letter that's
 8 attached. September 13, 2001, Jim Hodge to
 9 James Price.
 10 This is same Jim Hodge that you had
 11 been dealing with since you were retained in
 12 June of 2000, correct?
 13 A. It was.
 14 Q. Right. And you received a hundred
 15 thousand dollars the latter part of August,
 16 about two to three weeks before September 13th,
 17 right?
 18 A. I did.
 19 Q. Right, that was your fee.
 20 Now let's look at the letter. It
 21 starts off, he's telling you, "Dear Jim: I
 22 wanted to advise you that on July 24, 2001, the
 23 Kroger Company purchased the three properties
 24 owned by the Merrill-Lynch-sponsored limited
 25 partnership Balkhouse Associates."

Page 188

1 J. Price 1/21/04
 2 You see that?
 3 A. Yeah.
 4 Q. Was that news to you --
 5 A. No.
 6 Q. -- when he told you on September 13th
 7 "I wanted to tell you"?
 8 A. Oh, I think just a style of writing.
 9 I have --
 10 Q. I asked you if it was news to you,
 11 sir?
 12 A. No. No, it was not, no.
 13 Q. Isn't it true that you and Hodge got
 14 together and you said, Hodge, the only way I can
 15 help you is, I can't possibly tell Kadish of my
 16 involvement. Therefore, I want you to write me
 17 a letter that looks like you're giving me news I
 18 never had before?
 19 A. No.
 20 Q. Isn't that what you tried to?
 21 A. No.
 22 MR. PHILLIPS: Objection,
 23 argumentative.
 24 A. I never did that.
 25 Q. So when he writes to you on September

Page 189

1 J. Price 1/21/04
 2 13th and says, "I wanted to advise you that on
 3 July 24, 2001, Kroger bought," did you write him
 4 back and say: What, have you lost your mind?
 5 You guys just paid me a hundred grand a couple
 6 of weeks ago. I know that it closed.
 7 Did you ever write him back and say
 8 that, in words or substance?
 9 MR. PHILLIPS: Argumentative.
 10 Objection.
 11 Go ahead.
 12 A. No.
 13 Q. No. And the reason you didn't do that
 14 is you wanted Kadish -- you wanted to dupe
 15 Kadish, didn't you?
 16 A. No.
 17 MR. PHILLIPS: Objection.
 18 A. No.
 19 Q. Did you have any involvement with
 20 Hodge in the preparation of the text of this
 21 letter?
 22 A. Might have discussed it on the phone.
 23 I don't remember.
 24 Q. And did you discuss with him the way
 25 it would be framed to make it look like he was

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DEPOSITION OF JAMES D. PRICE

New York, New York

Thursday, January 22, 2004

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Case No. 0-1-02-439

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